JUDGMENT OF THE COURT (Fourth Chamber)
15 June 1989 *

In Case 348/87

REFERENCE to the Court under Article 177 of the EEC Treaty by the Hoge Raad (Supreme Court) of the Netherlands, for a preliminary ruling in the proceedings pending before that court between

Stichting Uitvoering Financiële Acties,

and

Staatssecretaris van Financiën,

on the interpretation of Article 13(A)(1)(f) of the Sixth Council Directive of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment (77/388/EEC) (Official Journal 1977, L 145, p. 1),

THE COURT (Fourth Chamber)

composed of: T. Koopmans, President of Chamber, C. N. Kakouris, and M. Diez de Velasco, Judges,

Advocate General: J. Mischo
Registrar: J. A. Pompe, Deputy Registrar

after considering the observations submitted on behalf of

the appellant in the main proceedings, by J. W. Meijer, of the Hague Bar,

* Language of the case Dutch

the Government of the Kingdom of the Netherlands, by H. J. Heinemann, acting as Agent,

the Commission of the European Communities, by D. Calleja and B. J. Drijber, acting as Agents,

having regard to the Report for the Hearing and further to the hearing on 20 April 1989,

after hearing the Opinion of the Advocate General delivered at the sitting on 20 April 1989,

gives the following

Judgment

1 By judgment of 4 November 1987, received at the Court on 16 November 1987, the Hoge Raad of the Netherlands referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Article 13(A)(1)(f) of the Sixth Council Directive of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment (77/388/EEC) (Official Journal 1977, L 145, p. 1), hereinafter referred to as 'the Sixth Directive'.

The question was raised in proceedings brought by a foundation, the Stichting Uitvoering Financiële Acties (hereinafter referred to as 'SUFA') against the tax authorities concerning a tax assessment by which SUFA was charged turnover tax on the basis of the costs of the services supplied by it to another foundation, the Stichting Algemene Loterij Nederland (hereinafter referred to as 'ALN').

3 It is apparent from the documents before the Court that, under the agreement between the two foundations, SUFA is entrusted with the practical arrangements for the lotteries which ALN organizes on behalf of the social and cultural

institutions affiliated to it. All the expenses incurred by SUFA for that purpose are reimbursed by ALN whose only activity is to distribute the proceeds of the lotteries, after the expenses have been deducted, between its affiliated institutions.

4 SUFA brought an action before the Gerechtshof (Regional Court of Appeal) in The Hague, claiming that the services it provides on behalf of ALN must be exempt from turnover tax by virtue of the provisions of Article 13(A)(1)(f) of the Sixth Directive under which 'Member States shall exempt . . . services supplied by independent groups of persons whose activities are exempt . . . for the purpose of rendering their members the services directly necessary for the exercise of their activity, where these groups merely claim from their members exact reimbursement of their share of the joint expenses, provided that such exemption is not likely to produce distortion of competition'. It is common ground that ALN enjoys this exemption.

5 However, the Gerechtshof considered, as did the national tax authorities, that SUFA is not an independent group of persons supplying services to its members but that it carries out its activities on behalf of a sole principal, namely ALN, which is not a member of SUFA.

6 The dispute was brought before the Hoge Raad which decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Do the transactions which must be exempted from turnover tax pursuant to Article 13(A)(1)(f) of the Sixth Directive cover the activities of a foundation which consist exclusively in the organization and performance of work which is related to the activities of another foundation, against reimbursement of expenses actually incurred, where the other foundation acts as an umbrella organization for a number of bodies exercising an activity which is exempt or for which they are not taxable and, solely for those bodies, performs services as defined in the aforesaid provision of the Sixth Directive?'

7 Reference is made to the Report for the Hearing for a fuller account of the facts of the main proceedings, the course of the procedure and the observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

8 The answer to the abovementioned question depends in particular on whether the exemption provided for by Article 13(A)(1)(f) of the Sixth Directive applies to a foundation which supplies, on a subcontractual basis, to another foundation which enjoys the aforesaid exemption as an independent group of social and cultural institutions, the services directly necessary for the exercise of the exempted activity.

9 SUFA proposes that that point be answered in the affirmative, emphasizing the particular characteristics of the division of tasks between the two foundations. On the other hand, the Netherlands Government and the Commission propose a negative reply, arguing that that division of tasks in the field of the organization of lotteries cannot lead to the exemption being extended to a body to which certain activities are subcontracted.

10 The preliminary observation must be made that, as the Court pointed out in its judgment of 26 March 1987 in Case 235/85 *Commission* v *Netherlands* [1987] ECR 1485, the Sixth Directive confers a very wide scope on value-added tax comprising all economic activities of producers, traders and persons supplying services.

11 With regard to the exemptions provided for by the Sixth Directive, it is evident from the eleventh recital in its preamble that the exemptions constitute independent concepts of Community law which, as the Court stated in its judgment in Case 235/85, cited above, should be placed in the general context of the common system of VAT introduced by the Sixth Directive.

12 As for the scope of the exemptions thus provided for, it should be pointed out that in its judgment of 11 July 1985 in Case 107/84 *Commission* v *Germany* [1985]

ECR 2655, the Court emphasized that although it is true that the exemptions are granted in favour of activities pursuing specific objectives, most of the provisions also define the bodies which are authorized to supply the exempted services and that those services are not defined by reference to purely material or functional criteria. In that judgment the Court also stated that Article 13 of the Sixth Directive does not provide exemption for every activity performed in the public interest, but only for those which are listed and described in great detail.

13 It is clear from the foregoing that the terms used to specify the exemptions envisaged by Article 13 of the Sixth Directive are to be interpreted strictly since they constitute exceptions to the general principle that turnover tax is levied on all services supplied for consideration by a taxable person.

14 Article 13(A)(1)(f) of the Sixth Directive makes express reference only to independent groups of persons supplying services to their members. That is not the position where one foundation supplies services exclusively to another foundation, neither of the foundations being a member of the other. Since the conditions for exemption are precisely formulated, any interpretation which broadens the scope of Article 13(A)(1)(f) of the Sixth Directive would be incompatible with the objective of that provision.

15 Consequently, the reply to the question referred for a preliminary ruling should be that the transactions which must be exempted from turnover tax pursuant to Article 13(A)(1)(f) of the Sixth Council Directive (77/388/EEC) of 17 May 1977 do not cover the activities of a foundation which consist exclusively in the organization and performance of work which is related to the activities of another foundation, against reimbursement of expenses actually incurred, where the other foundation acts as an umbrella organization for a number of bodies exercising an activity which is exempt or for which they are not taxable and, solely for those bodies, performs services as described in the aforesaid provision of the Sixth Directive.

Costs

16 The costs incurred by the Netherlands Government and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the action pending before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT (Fourth Chamber),

in answer to the question referred to it by the Hoge Raad, by a judgment of 4 November 1987, hereby rules:

The transactions which must be exempted from turnover tax pursuant to Article 13(A)(1)(f) of the Sixth Council Directive (77/388/EEC) of 17 May 1977 do not cover the activities of a foundation which consist exclusively in the organization and performance of work which is related to the activities of another foundation, against reimbursement of expenses actually incurred, where the other foundation acts as an umbrella organization for a number of bodies exercising an activity which is exempt or for which they are not taxable and, solely for those bodies, performs services as described in the aforesaid provision of the Sixth Directive.

Koopmans Kakouris Diez de Velasco

Delivered in open court in Luxembourg on 15 June 1989.

J.-G. Giraud
Registrar

T. Koopmans
President of the Fourth Chamber